

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/014221

International filing date (day/month/year)
14.12.2004

Priority date (day/month/year)
23.12.2003

International Patent Classification (IPC) or both national classification and IPC
A47J37/12, A47J37/04

Applicant
DE' LONGHI S.P.A.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☒ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITYInternational application No.
PCT/EP2004/014221

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
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Box No. III Non-establishment of opinion with regard to novelty, inventive step and Industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 12-16,18-31,35,37

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 37 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 12-16,18-31,35
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees, the applicant has:
- ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☒ not paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is
- ☐ complied with
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☐ all parts.
 - ☒ the parts relating to claims Nos. 1-11,17,32-34,36

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	9,33
	No: Claims	1-8,10-11,17,32,34,36
Inventive step (IS)	Yes: Claims	9,33
	No: Claims	1-8,10-11,17,32,34,36
Industrial applicability (IA)	Yes: Claims	1-11,17,32-34,36
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

- Non-Unity
- Rule 29(6) (claim 37)

Re Item IV

Lack of unity of invention

The definitions of the different (groups of) claimed inventions are only intended to identify said inventions in a concise manner. They may well, as such, comprise terms or generalisations which upon a close analysis could be found to extend the defined subject-matter beyond the contents of the applications as filed.

Document D1 (US5417148, fig. 1,3) discloses a fryer comprising all the technical features of claim 1.

Group 1:

The problem underlying the invention stated in the independent claim 1 is not novel and therefore does not contain any features which could be considered as special technical features (STF's) (Rule 30 EPC). The features from dependent claims 2-8 are also known from D1. Claim 9 contains the feature of a third resistance inside an oil-container. This feature is not known from D1 and is therefore considered as the special technical feature of the first group of claims, which is intended to be a contribution over this prior art. This feature apparently solves the problem of supplying hot oil for frying a food product.

Group 2:

The special technical features, as defined in Rule 30 EPC, of the second group of claims, which are intended to be a contribution over said prior art, i.e. the features of a basket being entirely arranged outside the container (cf. claim 12).

This feature apparently solves the problem of allowing easy accessibility to the container.

Group 3:

The special technical features, as defined in Rule 30 EPC, of the third group of claims, which are intended to be a contribution over said prior art, i.e. the features of positioning means allowing the food to be in air, or in oil, or partially in both (cf. claim 14).

This feature apparently solves the problem of providing a choice of cooking method.

Group 4:

The special technical features, as defined in Rule 30 EPC, of the fourth group of claims, which are intended to be a contribution over said prior art, i.e. the feature of a second positioning means of the container with respect to the outer housing (cf. claim 15).

This feature apparently solves the problem of adjusting the desired heating effect.

Group 5:

The special technical features, as defined in Rule 30 EPC, of the fifth group of claims, which are intended to be a contribution over said prior art, i.e. the feature of recirculation means (cf. claim 18).

This feature apparently solves the problem of reducing the use of oil.

Group 6:

The special technical features, as defined in Rule 30 EPC, of the sixth group of claims, which are intended to be a contribution over said prior art, i.e. the feature of a duct between container and outer casing (cf. claim 20).

This feature apparently solves the problem of a compact construction.

Group 7:

The special technical features, as defined in Rule 30 EPC, of the seventh group of claims, which are intended to be a contribution over said prior art, i.e. the feature of holding means (cf. claim 29).

This feature apparently solves the problem of food suffering damage during rotation.

No same or similar special technical features can be determined and different underlying problems are solved. Moreover, it is clear that the seven claimed inventions can be applied independently of each other, i.e. they are not necessarily inter-related.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

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It appears therefore that no technical relationship between the various claimed inventions exists involving one or more of the same or corresponding special technical features, beside the common and already well known feature of a fryer as in document D1. The 7 groups of claims are thus not so linked as to form a single general inventive concept.

Furthermore, searching more than one of these different subjects would have caused major additional search efforts.

Before following the invitation to pay additional search fees the applicant is advised to carefully consider his intentions in later stages of the procedure (i.e. Chapter II). Applicant should take into account that additional search fees, once paid, are unlikely to be refunded if at such a later stage it becomes in retrospect apparent that in the light of amendments of the claims such a payment was in fact unnecessary. Such a case may rise where the applicant in that later stage of the proceedings arrives at a subject-matter to be protected which includes the further subjects here identified only in dependency on the subject identified here as the main (first) invention. On the other hand the applicant is advised that not following the invitation may lead to a loss of rights concerning those subjects *per se*, identified here as further inventions.

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Reference is made to the following documents:
D1: US-A-5 417 148 (CAVALLO ET AL) 23 May 1995
D2: EP-A-0 455 498 (MOULINEX SWAN HOLDINGS LIMITED) 6 November 1991
D3: EP-A-0 300 306 (ALGA DI GIUDICI ANGELAMARIA; ALGA DI GIUDICI ANGELAMARIA & C. S.N.C) 25 January 1989
2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

2.1. The document D1 (fig. 1,3) discloses (cf. claim 1):

Fryer comprising a rotatable cooking basket (2) and an oil container (3,17), which has air heating means (19) and forced circulation means (38) of said heated air through said basket for at least partially cooking the food product contained in said basket.

2.2. The document D1 discloses furthermore (cf. claim 32):

Method for cooking a food product with a fryer equipped with an oil container (3,17) with a rotatable cooking basket (2), wherein a forced circulation of hot air through said basket is generated with heating means (19), and in that said basket is positioned with respect to said container so as to keep said food product at least partially exposed to said heated air for at least a period of the cooking cycle for at least partial cooking of said food product through said heated air.

3. Dependent claims 2-8,10,11,17 and 34,36 do not contain any features which meet the requirements of the PCT in respect of novelty or inventive step, see documents D1 - D3 and the corresponding passages cited in the search report.

4. The combination of the features of dependent claims 9 and 33 meets the requirements of the PCT in respect of novelty and inventive step, because it is neither known from, nor rendered obvious by, the available prior art, to immerse a basket in heated oil and pass hot air through said basket.
